85-772

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

CASE NUMBER:

THE SUPREME COURT OF THE UNITED STATES

FALL, 1985 October 28, 1985,)

RONALD E. BROWN,)
Petitioner,)
vs.)
THE STATE OF WASHINGTON,)
Respondent)

ON PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF WASHINGTON.

PETITION FOR CERTIORARI

RONALD E. BROWN, PRO SE
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Seattle, WA 98155
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QUESTIONS PRESENTED FOR REVIEW

1. Was there sufficient evidence of record to establish proof beyond a reasonable doubt as to each element of the crime with which Defendant was charged?

2. Was it a violation of the defendant's right to confront witnesses against him, under the United States Constitution, for the trial court to deny him the opportunity to cross examine the State's witness by referring to a statement made by second eyewitness who was subpoenaed by the State but upon whom the subpoena had not been served?

3. Was it a violation of the defendant's right to confront witnesses against him, and of his right to due process, when the State failed to disclose the proper address and telephone number of a witness, and such nondisclosure violated local discovery rules, resulting in counsel not learning that he had been subpoenaed and could have been available for trial?

4. Was it a violation of defendant's constitutional right to be free from double jeopardy when sentence which was not stayed pursuant to local court rule was reimposed after appeal was denied?

Parties: as stated on cover page.

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reports of courts below: none of the opinions or orders in this matter have been reported in any official or unofficial publication.

GROUNDS FOR JURISDICTION

(i) Petitioner seeks review of conviction dated December 13, 1982.

(ii) Petitioner also seeks review of denial of motion to vacate the conviction and reimposition of sentence, dated October 2, 1984.

(iii) n/a

(iv) Statutory provision conferring jurisdiction to review by writ of certiorari: 28 USC 1257.

PERTINENT RULES AND PROVISIONS.

UNITED STATES CONSTITUTION, AMENDMENTS # 5,6,and 14 (section 1).

#5:" No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cased arising in the land

or naval forces, or in the militia, when in actual service during time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

#6; "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have the compulsory process for obtaining witnesses in his favbor, and to have the Assistance of Counsel for his defence.

#14(section 1); "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nore shall any state deprive any person of life, liberty, or property without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WASHINGTON STATE RULES ON APPEAL FROM COURTS OF LIMITED JURISDICTION, # 4.2 (b) and # 4.3 (b):

RULE 4.2 Enforcement of Judgment.
(b) Criminal case. A sentence in a criminal case will be enforced by the court of limited jurisdiction if the defendant does not appeal or if the defendant appeals and fails to stay enforcement of sentence as provided in Rule 4.3 (b).

RULE 4.3 Stay of Enforcement of Judgment.
(b) criminal case. The court of limited jurisdiction shall stay enforcement of a sentence in a criminal case if a notice of appeal has been filed by the defendent and (1) the defendant posts cash bail or files a bond to the STAte in a reasonable sum fixed by the court court of limited jurisdiction, with sureties as the court may require, or (2) the court of limited jurisdiction determines that enforcement of the sentence should be stayed without cash bail or a bond. A stay must be conditioned on the defendant's timely prosecution of the appeal. In a criminal case, the trial court has authorit

authority to fix conditions of release of a defendant and to revoke a suspended or deferred sentence.

(both rules, adopted Dec. 2, 1980, Eff. Jan. 1, 1981)

UNIFORM LOCAL RULES FOR KING COUNTY DISTRICT COURTS, Rule CT-10. Discovery.

"The prosecution in any pending case shall, on written request, make a timely and full disclosure to the defense of all officers' reports, officers' notes, witnesses , written statements, and admissions of the defendant. The prosecution may seek a limiting or protective order by giving the defense notice and orally noting the request for hearing, the request shall then be treated as a motion of the defense for an order directing discovery. Unexcused failure of the prosecution to timely provide the requested information shall result in the court, on defense motion, suppressing any evidence offered which was requested and not disclosed. (an otherwise excused failure to disclose may be grounds for a defense continuance in order to assure a fair trial) For this rule the word "prosecution" shall mean either party and the work "defense" shall mean either party

except, the defendant and defendant's attorney shall not be required to disclose statements of the defendant whether made orally or in writing. The obligations of the defense and prosecution under this rule are reciprocated, except as to the personal privileges of the defendant."

(Adopted, June 1, 1975; Revised, August 1, 1979.)

STATEMENT OF THE CASE

On December 13, 1982, petitioner Ronald E. Brown was convicted of the crime of displaying a weapon to intimidate. (RCW 9.41.270.) Mr. Brown was charged as a result of complaints by three alleged eye witnesses; the three, Joiner, Hobbs, and Bottman, were issued trial subpoenas. Hobbs was not at the address given to the police and his subpoena was not served. He gave a statement to police, which was produced to defendant during the discovery process. Bottman did not give a statement to the police. Defense counsel tried repeatedly to contact him prior to trial. His telephone was disconnected and the address given for him was vacant.

Defense counsel asked the prosecutor if there was any more information available as to the wehreabouts of Bottman, but no additional information was disclosed by the prosecution.

At trial, only Joiner appeared as an alleged eye-witness. Joiner repeatedly and directly contradicted his own testimony as to many facts. In addition, he was unable to accurately describe the alleged weapon. The trial judge found that Joiner had contradicted himself repeatedly.

At trial, defendant attempted to introduce the statement by Hobbs to impeach the testimony of Joiner. The court granted the prosecution motion to not allow use of the statement, deeming it to be inadmissable hearsay.

Defendant appealed th e matter to the King County Superior Court; in its responsive brief, the prosecutor disclosed that Bottman had actually been subpoenaed at an address different from that given to de-

fense counsel.

The Superior, appellate, and Supreme courts of the State of Washington affirmed Brown's conviction.

Brown then made a motion to vacate the conviction at the trial court level, based upon the prosecutor's failure to disclose the correct location of the witness, in combination with the court's own finding that the witness Joiner had contradicted himself, based on the court's own findings. The court denied this motion.

The court reimposed sentence consisting of one year suspended on condition the defendant have no more offenses, attend alchohol school, and pay a fine. Brown contended that he had already served the portion of the sentence dealing with the condition of no additional offenses, in that the sentence had not been stayed, and he had had no additional offenses during the 12 months after initial sentencing on December 13, 1982.

Petitioner appealed the court's denial of the motion to vacate and the reimposition of the allegedly-served portion of the sentence. The trial court's decision was affirmed by the Superior court of King county,and the appeals court, and by the Supreme Court of the State of Washington denied review of the issues.

FEDERAL QUESTIONS RAISED

1. As to the apeal after initial conviction and sentencing on December 13, 1982:

(a) Petitioner's de novo Appeal filed December 22, 1985, included, in its opening brief at page 5, lines 17--28, that the sixth amendment governs the scope of cross-examination, which was unconstitutionally curbed by the trial court finding that the use of the Hobbs statement for cross-examination purposes was inadmissable hearsay. In addition, Brown argued that sufficient facts to form a basis of guilty were not prese at trial.

The Superior Court decision affirming the conviction found:

> "The failure of subpoenaed witnesses to appear for trial does not constitute a violation of the 6th amendment rights of defendant.
>
> The statement of a witness offered as impeachm impeachment was properly rejected as inadmissable hearsay.
>
> Sufficient facts were presented at trial to form a basis for a finding of guilt."
>
> DECISION ON RALJ APEAL, FEb. 23, 1983, King County Superior Court docket # 82-1-03873-0.

In Brown's motion for discretionary review to the appeals court, at page 2, he raised the following federal issues:

> " 1. Were the facts presented at trial sufficient to form a basis of a finding of guilty?
>
> . . .
>
> 3. Was Defendant's constitutional right to confront witnesses violated when he wasnot informed of the current address of one witness and he was otherwise prevented from confronting two of the three persons whose statements formed the basis charging him with a crime?
>
> . . . "

The COMMISSIONER"S RULING DENYING MOTION

FOR DISCRETIONARY REVIEW held, at page 2, last ¶, lines 5--6:

> "The issues presented do not present significant questions of constitutional law."

The appellate court decision was the subjec subject of a moiton to modify by Brown, where he incorporated the issues in his motion for discretionary review by refernce, at page 1, first ¶, last sentence. The motion was summarily denied by an order entered on September 29, 1983.

Brown's motion for discretionary review filed in the Washington State Supreme Court was denied on January 17, 1984.

2. As to the appeal after the motion to vacate and reimposition of sentence.

In Brown's appeal brief to the King County superior court, he argued that the failure to vacate the conviction violated the 6th amendment right to effectively cross-examine witnesses agaist him. (Docket # 84-1-03051-4, page 4, paragraph 1.)

Brown also raised the issue:

> "The defendant is placed in double jeopardy for his liberty when the trial court reimposes condition of no violationsafter appeal period when the same sentence was not stayed and during which which there were no further violations."
>
> (APPELLANT BRIEF, page 2, lines 27--27, page 3, lines 1--2, King County Docket # 84-1-03051-4.)

The Superior court did not refer to any constitutional issues in its ruling affirming the trial court decisions.

Both of the above federal issues were raised in Brown's Motion for Discretionary review to the Court Appeals. In its COMMISSIONER'S RULING DENYING MOTION FOR DISCRETIONARY REVIEW dated May 9, 1985, the Appeals court made no comment as to the first fedral question, and stated as to the second one:

> ""petitioner has not demonstrated that he has been punished twice for the same offense. He has not presented a constitutional issue as requried by RAP 2.3 (d).
>
> (at page 3, lines 14--17.)

Brown incorporated by reference the above issues in his motion to modify, which was summarily dismissed and denied, and his sub-

sequent motion for discretionary review to the State of Washington Supreme Court. The Supreme Court entered a ruling Denying Motion for Discretionary Review on September 5, 1985, without any further consideration of the federal issues, and heavily relied on its denial of review in the case during the initial appeal..

REASONS RELIED ON FOR ALLOWANCE OF WRIT

A. IN GENERAL.

B. AS TO EACH ISSUE PRESENTED FOR REVIEW.

A.IN GENERAL

In deciding the issue of reviewing this matter, the court must be guided by the following considerations:

1. Petitioner need not, in this petition, prove that he would be successful on review. He need only present issues that should be reviewed under the criteria in Rule 17.

2. The character of issues herein is that of raising basic constitutional questions that must be clarified by this court: to what extent, is it necessary for a state court to follow it's own rules in guaranteeing due process and other constitutional safeguards for citizens of the United States? It is undipputed in this case that certain of the State court rules were not followed. That court has held that in other cases, where a State sets up procedural remedies which in themselves may not be constitutionally required, once they are established as remedies, it is a violation of due process not to follow them. e.g.,(1982) Punton v. Seattle 32 Wn App.959,650 P2d 1138 Petitioner relies on this general theory in urging review--in additiona to the specific rules of law that relate to each specific issue presented for reivew.

AS TO EACH ISSUE PRESENTED FOR REVIEW

1. Was there sufficient evidence of record to establish proof beyond

a reasonable doubt as to each element of the crime with which defendent was charged?

In this matter, the court would need the entire record of testimony of the one± eye-witness who testified at trial; however, a decision to accept review can be made based on the undisputed finding of the trial court, which was that that witness had contradicted himself repeatedly, and also contradicted the physical facts and contradicted some of the factual findings of the court. Is it possible for a reasonable person to find guilt beyond a reasonable doubt, while at the same time finding that the sole person on whom this conclusion is based was wrong as to key facts, and was continuously self contradictory? Due process requires Proof beyond a reasonable doubt for every element of a crime. In re Winship 394 US 358, 90 S.Ct 1068, 25 L.Ed2d 368 (1970). Allowing Brown's conviction to stand would permit an individual to charge another with a crime,

and allow conviction of that crime without requiring that the State bring forth one credible eye witness. The alleged victim could, as in this case, make up the story as he testified, and unless he broke down and repudiated his testimony, the defendant would b e convicted by the court selectively believing facts that the witness himself did not actually testify to.

This issue is even more urgent for court review when combined with the lack of formality of the court towards the defendant in this matter--showing a shocking disregard for the safeguards which would have enabled petitioner to put forth his defense at trial.

2. Was it a violation of the defendant's right to confront witnesses against him, under the United States Constitution, for the trial court to deny him the opportunity to cross examine the State's witness by referring to a statemen made by second eye witness who was subpoenaed by the State but upon whom the subpoena had not been served?

The trial court denied the use of the absent witness's statement based on hearsay rules. However, the statement was offered, not to prove the truth of the matter asserted, but to further impeach a witness who had already estabished a pattern of self-contradiction. Impeachment is clearly a basic tenet of the 6th amendment right to confront witnesses. If a defendant is denied effective cross-examination, no amount of prejudice need be shown, and no amount of showing want of prejudice can cure this error. Davis v. Alaska (L974) 94 S.Ct. 1105; 415 U.S. 308, 39 L.Ed.2d 347; Douglas v. State of Alaska (1965) 85 S.Ct. 1074; 380 U.S. 415 13 L.ED.2d 934.

The trial court's actions were contrary to the latitude of cross-examination guaranteed to defendant by a person accused of a crime. It was especially crucial where the was only one eye witness. This issue should be reviewed by this court.

3. Was it a violation of the defendant's right to confront witnesses against him, and of this right to due process, when the State failed to disclose the proper address and telephone number of a witness, and such nondisclosure violated local discovery rules, resulting in counsel not learning that he had been subpoenaed and cou have been available for trial?

Combined with the above issues, it is undisputed that inthis case, the prosecutor failed to disclose (per CT-10) the actual address and telephone number of a third eye witness to counsel, leading counsel to believe that such witness had left and was not availble for trial. This witness had not made any statements to the police, and thus it is unknown precisely what he would have testified to at trial.

The courts below held that absent a showing of prejudice, counsel could not argue this issue and be accepted on appea However, this reasoning is inconsistant with the authority cited on page 20, infra. In addition, these procedural rules are

consistantly required to be rigidly enforced. State v. Martin 18 WA 493, 569 P2d 1204 (1977). The rules make no distinction between inculpatory and exculpatory information. State v. Oughton (1980) 26 WA 74, 612 P2d 812. The State has a duty to disclose the information immediately upon obtaining it. State v. Penn (1979) 23 WA 202; 596 P2d 1341. A prosecutormust disclose information that might have been used to impeach a witness for the prosecution. State v. Cohen (1978) 19 WA 600, 576 P2d 933. All of the above were violated when the prosecutor waited until af ter trial, and after the opening brief on appeal, to disclose that there was a current address for the witness Bottman.

The petitioner need not show prejudice per the above case law; however, prejudice is clear where the State has exclusive control over the information as to witnesses and does not disclose it. In addition, the potential for abuse of

constitutional rights is truly chilling--if hte State can omit identifying and locating known witnesses , violating discovery rules, then it is entirely possible to convict a person of a crime when there is a known witness who could exculpate him. Of course, the discovery rules are established to avoid this very potential; to make discovery an open process; to allow counsel to rely on information from the State as accurate and not waste time needlessly questioning and verifying basic factual data that is to be honestly disclosed.

This issue should be analysed similarly to the Jenks rule (18 USC 3500.) For those cases, interpreting that requirement that witness statements be given to accused persones the court is not allowed to speculate whether such materials could have been used at trial, and error must be strictly applied. Goldberg v. us. 96 SCt 1338, 425 U.S. 94,47 L.Ed. 2d 603--on remand 582 F2d 483,cert. den. 99 Sct. 1538.

It is incumbent on this court to determine whether a State court violates the constitutional rights of an accused by ignoring its own discovery rules when violated by the prosecutor. In this case, the petitioner had no inkling of the correct address of the witness until after trial, and after the opening appellate brief, although his counsel tried to contact the witness,and asked the prosecutor for any other addresses of such witness. This violation of the discovery rule is even more damaging to petitoner in this case where all other avenues of impeachment were cut off at trial, and where the sole eyewitness was very open to being impeached.

4. Was it a violation of defendent's consititutional right to be free from double jeopardy when sentence which was not stayed pursuant to local rule was reimposed after appeal was denied?

In this case, it isundisputed that the sentence was not stayed on appeal in

accordance with requirements of local rules. RALJ 4.2(b), 4.3(b)

First, Defendant never applied for a stay. The rules state that the sentence shall be enforced unless the defendant obtains a stay. The State court reasoned that the sentence was 'actually" stayed because the trial court did not make a move to collect the fine or assessments, or to monitor whether or not petitioner attended alcohol information school. Tis reaonsing is irrelevant to the requirement in the rules-- that the defendnat take some action to stay the sentence if it is to be stayed. That the court did not follow the rules in affirmatively enforcing the sentence has no bearing on whether petitioner has served the condition of having no violation The question arises--what if petitioner <u>had</u> had a violation of the law during the pendency of appeal? The court could just as easily have ruled that it had <u>not</u> stayed appeal,

BEST AVAILABLE COPY

and revoked the deferred sentence and imposed jai
time. What if Defendnat has a violation
after the second reimposition of sentence? again
again, the court can reason that he is in violati
of the conditions. This is clearly double
jeopardy, and as enforced, the rule of the
court is unconstitutionally vague in that
defendant does not know for sure what his
status is. Double jeopardy does apply to
sentences as well as convictions of a crime.
Ex. Parte Lange 85 U.S. 163, 21 L. Ed. 872 (1873.
It is constitutionally required that punishment
already exacted for an offense be credited
on a new conviction for the same offense.
Simpson v. Rice 89 Sct. 2072, 395 US 711, 23 L.Ed
2d 656 (1969) Ala.

In addition, the rule of lenity
applies, where a rule is ambiguous to the
extent that a person subject to it is not sure
of its appication to him, it is construed
to violate his rights. Whitton v. State
479 P2d 302)

THEREFORE, BECAUSE OF THE COMPELLING REASONS OUTLINED ABOVE, THIS COURT HAS A DUTY TO REVIEW THE ISSUES HEREIN AND TO GRANT CERTIORARI IN THIS MATTER.

DATED this 26th day of October, 1985.

RONALD E. BROWN
PETITIONER

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

REspondent,

vs.

RONALD E. BROWN,

Petitioner

NO.51869-6

RULING DENYING MOTION FOR DISCRETIONARY REVIEW

- - - -

This matter, at an earlier phase and in a slightly different guise, has once previously been before this court.

Ronald E. Brown was convicted in district court of displaying a weapon to intimidate, in violation of RCW 9.41.270. The district court imposed a 1-year, deferred sentence with various conditions, including the condition that Mr. Brown commit no further offense during the year. On appeal, the King County Superior Court affirmed this conviction. The Court of appeals denied further review on the grounds that the case did not fall within any of the criteria of RAP 2.3(d). Mr. Brown then moved this court for discre-

tionary review. I denied review in a ruling filed January 17, 1984.

Upon remand from the Superior Court, the district court reimposed sentence. Mr. Brown then appealed again to the Superior Court which again affirmed Mr. Brown's conviction. The Court of Appeals again denied discretionary review on the grounds that the case does not fall witin the criteria of RAP 2.3(d). Mr. Brown now moves again for discretionary review by this court.

Of the two issues Mr.Brown seeks to raise, the first, which charges failure to provide discovery, was considered and rejected in his first RALJ appeal and in his first set of motions for discretionary review. Absent some suggestion that the law on this subject has changed or that some other intervening event demands reconsideration, I adhere to the view that the Court of Appeals did not err in declining to review that issue.

Mr. Brown's second claim is that he

served his original sentence while his first appeal was pending, and that the district court therefore subjected him to double punishment when it reimposed the conditions of his deferred sentance after his first appeal. In support of this claim Mr. Brown points out that RALJ 4.2 provides that a criminal sentence will be enforced by a district court if a defendant appeals but fails to stay enforcement of the sentence. From this he conclud concludes that, because no formalwritten stay order was entered, he was subject to the conditions of his deferred sentence during his first appeal and during that period satisfied the requirement that he not violate the law for 1 year.

This legal argument , however, does not square well with the facts. It is undisputed that Mr. Brown, the State, and the district court all considered the sentence to be in abeyance during the pendency of Mr. Brown's first appeal. The court did not supervise Mr. Brown. Also, he neither paid his fines or

assessments nor met the condition that he attebnd alchohol information school.

In rejecting Mr. Brown's second appeal, the Superior Court reasoned on this issue that RALJ 4.2 and 4.3 do not require the sentencing court to issue a formal, written order to stay enforcement of its sentence. Since the district court did not endorce its sentence, the sentence was effectively stayed. The court of appeals commissioner similarly reasoned that, because the sentence was not enforced during the first appeal, Mr. Brown was not by the reimposed sentence punished by a second time for his offense. Mr. Brown has cited no case which calls tis reasoning into question. I thus cannot conclude that the court of Appeals erred in denying discretionary review of this issue. See RAP 13.5(b).

The motion for discretionary review is denied. DATED at Olympia, Wasington this 5th day of September, 1985.

COMMISSIONER

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD E. BROWN,

Petitioner

No. 13049-8-I

COMMISSIONER'S RULING DENYING MOTION FOR DISCRETIONARY REVIEW

- - - -

Petitioner Ronald E. Brown seeks discretionary review of an RALJ decision entered in King County Superior Court which affirmed petitioner's conviction for displaying a weapon to intimidate contrary to RCW 9.41.270. Petitioner has filed a motion for discretionary review and the State has filed a response. The commisioner heard oral argument on June 17, 1983, and has determined that the motion should be denied.

The criteria for determining whether to accept review of a decision of the superior court which reviews a decision of a court of limited jurisdiction is sated in RAP 2.3(d) which provides:

(1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court, or

(2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved, or

(3) If the decision involves an issue of public interest which should be determined by an appellate court, or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

In his motion for discretionary review petitioner raises the following issues:

1. Were the facts presented at trial sufficie to form a basis of a finding of guilty?

2. Did the trial court err in sustaining the prosecution's objection to introducing written statement of an absent witness, for purposes of impeaching the prosecution's witness?

3. Was Defendant's constitutional right to confront witnesses violated when he was not informed of the current address of one witness and he was otherwise prevented from confronting two of the three persons whose statements formed the basis charging him with a crime?

4. Is it a reversable error that Defendant was not informed of the current address of a witness, which witness was subpoenaed but did not appear at trial in response to the subpoena?

5. It it a reversable error that trial testimony, which bears upon facts necessary to support a conviction, is controverted by physical evidence?

which included a one year deferred sentence on condition that petitioner pay a $75.00 fine plus assessments, have no violations of the law , and attend alcohol information school. Petitioner also contended that since there had been no formal stay during the pendency of his earlier appeal, that he had already complied with the condition that he have no further violations for 12 months. He argued that that portion of the sentence which atain ordered he have no violations of the law placed him in double jeopardy. The district court rejected this contention and imposed sentence. Petitioner appealed to the superior court which affirmed the district court decision. In its written decision the superior court determined that there was no error in denying the motion to vacate for violation of CT-10 relating to discovery because petitioner had shown no prejudice, and that since the district court did not enforce the sentence it was effectively stayed and therefore there was no

double jeopardy violation.

In his motion for discretionary revie petitioer contends that the superior court erred in finding that petitioner was not prejudiced by the prosecutor'sfailure to reveal the correct address of a witness. This discovery issue was considered and rejected in theearlier RALJ appeal. When considering this issue in light of the criteria of RAP 2.3(d) peti tioner has not demonstrated a basis upon which to accept review.

Petitioer also contends that he wsa placed in double jeopardy because the sentence was not stayed pending appeal and that he satisfied the condition of his original sentence that he have no violations of the law for one year. Petitioner relies upon Rule 4.2 of the Rules of Appeal for Courts of limited Jurisdiction which provides that a sentence in a criminal case will be enforced if the defendnat appeals and fails to stay enforcement.

Petitioner argues that since there was no stay, the sentence was enforced and therefore, the district court could not again impose the condition that he have no violations of the law for one year. Petitioner has cited no authority to support this contention and it is undisputed that the sentence was not enformced during the pendency of the appeal even though a formal stay was not entered. PEtitioner has not demonstrated that he has been punished twice for the same offense. He has not presented a constitution issue as required by RAP 2.3(d).

Since petitioner has failed to satisfy the criteria of RAP 2.3 (d) the motion for discretionary review is denied.

Now, therefore, it is hereby

ORDERED that the motion for discretionar review is denied.

Done this 9th day of May, 1985.

/S/LARRY A. JORDAN
Court Commissioner

In considering these issues in light of the criteria set forth in RAP 2.3(d), the commissioner determines that petitioner has not sustained his burden of demonstrating why this court should take reivew. The issues presented do not present significant questions of constitutional law, and the decision of the superior curt does not involve n issue of public interest which should be determined by an appellate court. Nor is the superior court decision in conflict with the decision of this court or the Supreme Court For these reasons, the motion for discretionary review should be denied.

Now, therefore, it is hereby

ORDERED that the motion for discretionary review is denied.

Done this 30 day of June, 1983.

LARRY A. JORDON/S/
Court Commissioer

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

vs.

RONALD E. BROWN

- - Apellant

No. 15953-4-I

COMMISSIONER'S RULING DENYING MOTION FOR DISCRETIONARY REVIEW

Petitioner Ronald E. Brown seeks discretionary review of a "Decision on RALJ Appeal." Petitioner has filed a motion for discretionary review and noted the matter for oral argument on March 22, 1985. The State filed a response and waived oral argument.

The commissioner heard oral argument from petitioner's counsel and has determined that the motion should be denied.

The criteria for determining whether to accept discretionary review are provided in RAP 2.3 (d) which provides that review will be accepted only:

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

vs.

RONALD E. BROWN

- - Apellant

No. 15953-4-I

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The commissioner heard oral argument from petitioner's counsel and has determined that the motion should be denied.

The criteria for determining whether to accept discretionary review are provided in RAP 2.3 (d) which provides that review will be accepted only:

(1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court, or

(2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved, or

(3) If the decision involves an issue of public interest which should be determined by an appellate court, or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdictio as to call for review by the appellate court.

The record indicates that petitione was convicted in Shoreline District Court on December 13, 1982, of displaying a weapon to intimidate. Following sentencing, he appealed to the superior court which affirmed the decision. Petitioner's subsequent motion for discretionary review in this court and in the Washington Supreme Court were denied. Thereafter, petitioner appeared in district court for imposition of sentence. Petitioner moved to vacate his conviction alleging a violation of the discovery rules. This moti was denied and the trial court imposed a sen

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASINGTON,)
Plaintiff)
vs.)
RONALD E. BROWN)
Defendant)

No. 84-1-03051-4
DECISION ON RALJ APPEAL

- - - - -

This appeal came on regularly for oral argument on December 31,1984, pursuant to R.A.L.J. 8.3 before the undersigned judge of the above entitled court.

After having reviewed the record on appeal and having considered the written and oral argument of the parties, the court holds the following:

Reasoning regarding assignment of Error 1) There was no error in denying the motion to vacate the judgment for violation of CT-10 because defendant shows no prejudice by any violation.

Reasoning regarding assignment of error 2) The court rules do not mandate that

the court issue a formal stay of sentence Here, the court did not enforce the sentence and it was effectively stayed.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT THE ABOVE CAUSE IS:

AFFIRMED: REMANDED, TO Shoreline District District Court for further proceedings in accordance with the above decision.

DONE IN OPEN COURT this 31st day of December, 1984.

CHARLES JOHNSON/S/
Judge

JEAN SCHIELER BROWN
Counsel for Appellant

REXANNE GIBSON/S/
Counsel for Respondent

IN THE SUPERIOR COURT OF HTE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

RONALD E. BROWN,

Defendant

82-1-03873-0
DECISION ON RALJ APPEAL

- - - -

This appeal came on regularly for oral argument on Feb. 23, 1983, pursuant to RALJ 8.3 before the undersigned Judge of the above entitled court.

After having reviewed the record on appeal and having considered the written and aral and oral argument of the parties, the court holds the following:

Reasoning Regarding ASsignment of Error 1) The failure of subpoenaed witnesses to appear for trial does not constitute a violation of 6th amendment rights of defendant.

Reasoning regarding assignment of error 2) The statement of a witness offered

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as impeachment was properly rejected as inadmissable hearsay.

Reasoning regarding Assignment of Error 3) Sufficient facts were presented at trial to form a basis for a finding of guilt.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the above cause is AFFIRMED, REMANDED, to Shoreline District Court for further proceedings in accordance with the above decision.

DONE IN OPEN COURT this 23 day of FEbruary, 1983.

FRANCIS E. HOLMAN
[Judge]

JEAN SCHIEDLER_BROWN
Counsel for Appellant

Niale K. MacInnes
Counsel for Respondent